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85-232

Supreme Court, U.S.
FILED
JUN 27 1985
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO.

SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1984

MARY E. PATCHETT,
Petitioner

v.

RICHARD L. PATCHETT, JR.,
Respondent

On Writ of Certiorari from the Supreme Judicial Court for the Commonwealth of Massachusetts and the Appeals Court for the Commonwealth of Massachusetts.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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38 pp

APPENDIX

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COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 84-781

RICHARD L. PATCHETT, JR. vs.

MARY E. PATCHETT

MEMORANDUM AND ORDER

Patchett and his former wife (Mary) had been married for ten years at the time of their divorce nisi. This was granted in May, 1984, to Patchett for cruel and abusive treatment (A. 3,32). The Patchetts then had four daughters, ranging in age from nine to three (A.25). Patchett was given custody of the children with broad visitation privileges to Mary.

The only issues argued on Mary's appeal relate to custody. For the most part, they deal with whether the probate

judge, in considering the issue of custody, gave undue weight to Mary's alleged "overinvolvement with religion as a Born Again Christian" (A 25).

The controlling principles affecting custody awards, in a case where the parents have different religious affiliations, are perceptively and fully discussed with great sensitivity in Felton v. Felton, 383 Mass. 232, 233-241 (1981). There, in considering what principles should be applied to achieve the best interest of the child in a case involving possible religious conflicts, it was said (at 235) "that if accommodation appears necessary, that form should be sought which instrudes least on the religious inclinations of either parent and is yet compatible with the health (and welfare) of the child."[1] We have in

mind the principles discussed in the Felton case. The probate judge heard testimony on three separate days (October 25, 1983, and January 10 and February 7, 1984). He made findings (A. 25 et seq.) which in most respects were thorough, especially with reference to occasions when Mary's religious fervor had led to incidents involving the children or Patchett. In other aspects, the findings should have been more complete. See Bouchard v. Bouchard, 12 Mass. App.

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[1] Here from an affidavit by Patchett (A.7) filed simultaneously with the divorce complaint (A. 5) it appears that both Patchett and his former wife "were raised in the Catholic religion and since ... [the] marriage ... [their] children were raised in the same religion," but that, after marriage, the wife has become "a Born Again Christian and attempted to convert ... [the] entire family." See, however, Tr. II-114, and III-63, where Mary testified that the children had been brought up in her church.

Ct. 899 (1981). We recognize, of course, that in this type of case great weight must be given to the views of the trial judge who has seen and heard the former spouses and other witnesses and has had opportunity to appraise them and the situation. We thus consider carefully the circumstances which appear in the appendix and the evidence in the light of this principle.

The trial judge (A.30) states that he, in awarding custody, has given "[d]ue and proper consideration to" a report of a guardian ad litem[2] and to separate evaluations of Patchett and Mary. These reports in general, on the matter of marital differences, were consistent with the judge's findings. They disclose no findings which clearly point to the award of custody to either parent, apart from

those special incidents referred to by the judge in his findings (A. 26-27). Those incidents seem, at least in part, to have grown out of the strong and uncompromising convictions of Mary and the attempts to make the children conform with practical applications of those convictions. See A. 36-38, 41, 49-50, 51-53.

The results of the testing, by different examiners, indicate that "Patchett should be capable of adequately caring for his children" (A. 52), and that (A.50)

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[2] There were three such reports: The guardian's comprehensive, able report of thirteen typed pages, dated April 20, 1983; a supplemental two-page report, dated May 13, 1983; and a report of November 17, 1983, transmitting to the judge a pyschodiagnostic evaluation of Mary by Human Resource Institute of Norton (signed by Judith A. Finochio, M.S.) and a similar evaluation of Patchett by the same Institute (signed by Gail Silverstein, Ph.S.). See A. 33-53. The probate judge's findings were filed on May 14, 1984. He obviously had the benefit of these reports, which by then were perhaps a little out of date.

Mary "has the potential to give adequate care to her children and to be sensitive to their needs." Each psychiatric or social worker's evaluation suggests that each parent would benefit from psychotherapy.[3]

The evidence did not require the judge to make a different decision on custody. We maintain various aspects of

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[3] The underlying competent research (A.33-43) of the guardian ad litem led her to three conclusions (A.44): (a) that the question of physical abuse was not "the only issue in this case" but that "the degree to which ... [Mary's] involvement with her church controlled her thinking and judgment was ... equally important"; (b) "that there is no pattern of physical abuse of the ... children," and (c) that the events on March 27, 1983, "appear to be a one-time incident," accompanied by a remark that neither "parent has ... struck the children in an abusive or out-of-control fashion." Another recommedation of the guardian ad litem (A.45) that "whichever parent has custody of the children should live at the family home in Brockton" might well have been different after hearing the testimony of the childrens' teachers in Plymouth about the children's satisfactory attendance and performance during the early part of the school year 1983-1984. See Tr. II-54 et seq., 68 et seq., 72 et seq., 74 et seq.

the situation revealed by the transcript, upon which the judge reasonably could reach his conclusion, probably with appropriate findings.

(a) Place of residence - Patchett has moved into quarters with his parents in Plymouth. His move was because he lost his job and count not afford an apartment any more (Tr. 1-10 to 12). There he has the assistance of his parents in taking care of the children. A social worker for the Massachusetts Society for the Prevention of Cruelty to Children (Tr. I-63) testified (Tr. I-82 to 83) that he observed the children (who "behaved, normally") in the grandparents' house, "a home, conducive to children." The judge could appraise the relative advantages of the Plymouth quarters, and Mary's parent's quarters

in Canton (see II-147 to 149; Tr. III-73 et seq.).

(b) Improvement in school experience. The evidence gave the judge ground for determining that the children were better adjusted to school attendance and accomplishment in Plymouth than they had been in Brockton. See references to the transcript in note 3, supra. At least the oldest child (described by Mary as "strong willed," Tr. II-154, and "stubborn," Tr. II-110), who had resisted school before her parents' separation (Tr. III-51 to 58), was showing marked improvement. The judge reasonably could be of opinion that the improvement should not be interrupted.

(c) Prior conduct of spouses. The probate judge could reasonably conclude that the marital differences (see, e.g.,

Tr. I-109 to 117, 142-148) which led to the final separation could not be reconciled (see, e.g., Tr. II-174 to 183), despite the various efforts by the parties (after temporary separations had occurred) at resuming married life. He also reasonably could conclude that Patchett's earlier conduct during separations (I-110 to 117), and his earlier preoccupation with sports (see Tr. II-104 to 109), and other activities, had become irrelevant, in view of Patchett's ready assumption of custodial responsibilities, particularly after his employment ceased in July, 1983 (I-134).

(d) Consideration of religious differences.

The probate judge could reasonably conclude that giving freedom to each parent (when the children were with that parent) to expose the children to the

religious exercises which they respectively regarded as appropriate (see, e.g., Tr. I-25 to 26; II-114; III-63) was the most suitable and least intrusive method of dealing with a controversial situation. We perceive no respect in which the judge improperly gave weight to religious considerations. He was bound to consider whether Mary's lack of moderation in impressing her religious views and practices upon the children was harmful to them.

The evidence, viewed as a whole, discloses that this is a situation where the judge (in placing custody of the children with Patchett with suitably broad visitation opportunities to Mary) has made an earnest and reasonable effort to frame an arrangement in which the children will have the benefit of contacts with both parents. Necessarily

his decision, where neither parent has shown basic unfitness, must have been one of judgment largely based on his observation of them as witnesses. Such a judgment is obviously hard to express in articulate findings. It is, of course, a judgment which may subject to modification if and as events change. Mary was employed in three part-time jobs, when she last testified (Tr. III-59 to 61). Patchett was unemployed and receiving unemployment compensation (Tr. III-136). Future developments (taking into account the employment, conduct, temperament, available time, and resources of each former spouse) will have bearing upon whether changes will be appropriate in the interests of the children

The judge's patient efforts to preserve for the children reasonable access to both parents will be greatly damaged

if the parents do no each (a) avoid bickering, inappropriate accusations, and excessive demands, and (b) adopt a policy of cooperation with the orders of the Court, reasonable consultation with each other, and mutual courteous consideration. The situation obviously is a difficult one, which can avoid harm to the children only if each parent makes a conscientious to prevent such harm. The judge, on the evidence, has reached a reasonable solution.

Therefore, upon consideration of the appendix, transcript of evidence, briefs, and oral arguments, it is ordered pursuant to Rule 1:28 of this court that the following entry be made on the docket of the Probate and Family court Department in this case:

Judgment affirmed.

By the Court (Greaney,
C.J., Cutter, &
Warner, JJ.),

Nancy Turck Foley
~~Assistant~~ Clerk

Entered: February 14, 1985.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT FOR THE COMMONWEALTH,

At Boston, February 14, 1985

IN THE CASE OF

RICHARD L. PATCHETT, JR.

vs.

MARY E. PATCHETT

Pending in the PROBATE AND FAMILY Court for the County of Plymouth

ORDERED, that the following entry be made in the docket; viz.,--

Judgment affirmed

By the Court,

/s/ Nancy Turck Foley,
Clerk

February 14, 1985

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH

OFFICE OF THE CLERK, 1412 COURT HOUSE,
BOSTON, MA. 02108 (617) 725-8055

NO. FAR-3443 April 1, 1985

RICHARD L. PATCHETT

vs.

MARY E. PATCHETT

In the Application for Further Review an Order has been entered that the Application is

DENIED

Jean M. Kennett,
Clerk

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. PROBATE COURT
No. D83-356

RICHARD L. PATCHETT, JR., Plaintiff
of Plymouth, in the County of Plymouth,

v.

MARY E. PATCHETT, Defendant
of Brockton, in the County of Plymouth.

All persons interested having been notified in accordance with law and after hearing it is adjudged nisi that a divorce from the bond of matrimony be granted the said plaintiff for the cause of cruel and abusive treatment as provided by Chapter 208 ss 1-2 and that upon and after the expiration of six months from the entry of this judgment it shall become and be absolute unless, upon the application of any person within such period, the Court shall otherwise order, and it is further ordered

that the plaintiff have the care and custody of Suzanne, Michelle, Jeannette, and Danielle Patchett, minor children of the parties, the defendant to have the right to visit and take said minor children at reasonable times and on alternating weekends from Friday after school until Sunday at 6 P.M. and Wednesday from 3 P.M. to 7 P.M.. Each party shall keep the personal property standing in his or her own name, or in his or her possession.

May 14, 1985 /s/ George Asack
Date Judge of Probate Court

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH,SS. PROBATE & FAMILY COURT DEPARTMENT Bo. D83-356

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RICHARD L. PATCHETT, JR., Plaintiff

v.

MARY E. PATCHETT, Defendant

FINDINGS OF FACT AND CONCLUSIONS OF LAW

****

1. LENGTH OF MARRIAGE

Richard L. Patchett, Jr. (plaintiff/husband) and Mary E. Patchett (defendant/wife) were married at Canton, Massachusetts on June 30, 1973, and have been married for (10) years.

2. CONDUCT OF PARTIES DURING MARRIAGE

Four children were born of the marriage: Suzanne Marie (d.o.b. April 3, 1975); Michelle Lee (d.o.b. October 7, 1976); Jeanette Marie (d.o.b. August 1, 1978); and Danie[illegible] Lee (d.o.b. September 27, 1980). During the marital years, the

family lived for a time in Holbrook and, for the past seven (7) years, at 408 Ash Street, Brockton, Massachusetts.

The wife was employed for a period of time at the outset of the marriage, but was not substantially employed from 1975 until after the final separation in 1983.

The husband was a student at Northeastern University at the outset of the marriage until his graduation in 1975. He held several jobs as a concessions manager from 1977 to 1983.

As the marriage progressed, the parties began to experience marital problems. The husband attributes these to his wife's overinvolvement with religion as a Born Again Christian, her method of disciplining the children, her unwillingness to get a job, and sexual problems. The wife describes the marital breakdown

as attributable to the husband's alleged involvement with other women. There was several periods of separation from May, 1982 - July, 1982, and from September, 1982 - February, 1983 - during which time the husband left the marital home, and the children were in the care of the wife. The final separation occurred in March, 1983, at which time the husband sought and received temporary custody of the children. The husband points to the incident which occurred on Sunday, March 27, 1983, as indicative of his wife's overinvolvement with church. He stated that, prior to this, there had never, really, been a history of abuse of the children by his wife and that she was always a good mother.

A woman named Terry Kotsiopoulos, who was the Patchett's landlady and lived downstairs in the house, testified that,

on the above date, the wife dragged Suzanne by the hair down the stairs and into the car. The child was hollering, screaming and kicking while the wife struck her, all because they were going to be late for church. This incident resulted in several bruises to the child.

On another occasion, the witness, Mrs. Kotsiopoulos, confronted the Defendant when she found the child, Suzanne, lying in the street, and she said to her, "This child is confused. She thinks if she lies in the street, and the car hits her, she will die and go to heaven", to which the defendant responded, "She just doesn't understand. She's confused about that."

One evening, when the wife was trying to read the Bible to the children at bedtime, the children would not listen, and she asked her husband to spank them. He

refused, and an agrument ensued.

For the past several years, there have been problems with their marriage, and the Court finds that these problems stemmed from her refusal to accompany her husband to the movies, nightclubs or to parties where there was liquor or divorced individuals present. The parties separated more than once over these difficulties, and Mr atchett would always go back home for the sake of his children. However, the wife was not willing to compromise on the issues involving their social life.

The wife began to play religious tapes in the home almost constantly. When the husband came home, she's have the tape player playing religious songs. When he woke up in the morning, the tapes would be playing. When the children went in for naps, she's have religious tapes playing. She was always reading the Bible to the

children as well. Upon his arriving home on many occasions, the children would greet their father with, "Are you saved, Daddy?" If he played the stereo, he was told he shouldn't listen to that, "It's jungle" or it's "devil music".

3. AGE OF THE PARTIES

The husband is thirty-three (33) years old.

The wife is thirty (30) years old.

4. HEALTH OF THE PARTIES

Both parties are in good physical health.

5. STATION OF THE PARTIES

The parties may be considered middle or lower-middle class.

6. OCCUPATION OF THE PARTIES

The husband is presently unemployed. He was most recently employed as a concessions manager for Stadium Management Corporation until July 27, 1983. The wife

presently is employed at three part-time jobs, as a secretary for Dr. Walter Johnson, as a home health aid for the Dedham Visiting Nurses, and as a cook for Bond & Burkhart.

7. & 8.

AMOUNT OF INCOME OF PARTIES AND SOURCES OF INCOME.

The husband receives $196.00 per week from unemployment compensation.

The wife's gross weekly income is $200.00, and her net, after taxes, is approximately $165.00. She is employed in three (3) part-time positions.

9. VOCATION SKILLS OF THE PARTIES

The husband last worked as a concessions manager at Schaefer Stadium, Foxboro, from August of 1982 to July, 1983. Prior, he worked as a concessions manager from 1977 to August of 1982. The husband received a bachelor's degree in business from Notheastern University in 1975.

The wife was employed early in the marriage as a nurses' aid, but stopped working in 1975 when the first child was born. From 1975 until March, 1983, plaintiff was a housewife and mother.

10. EMPLOYABILITY OF THE PARTIES

The husband has been seeking employment in his field, but is presently unemployed.

The wife is employable as a secretary or in the home health care field.

11. ESTATE OF THE PARTIES

Neither husband nor wife owns any real estate. Each own their own respective automobiles. The wife has an I.R.A. account in the sum of Eleven hundred ($1,100.00) Dollars.

12. LIABILITIES OF THE PARTIES

(a) The husband has liabilities in the amount of $5,417.00:

Legal Fees approx. $1,700.00

First National Bank "	$,2700.00
Sears	700.00
Brotherhood Oil	130.00
Anna Patchett	187.00
	$5,417.00

(b) The wife has no liabilities with the exception of her current expenses as indicated on her financial statement of February 7, 1984.

13. NEEDS OF THE PARTIES

The husband's needs are set forth in his financial statement in the amount of $189,50 per week, plus $5.00 per week on the liabilities, or a total of $194. 50 per week. The wife's needs are set forth in her financial statement in the amount of $170.00 per week.

14. & 15. OPPORTUNITY OF PARTIES TO ACQUIRE FUTURE CAPITAL ASSETS AND INCOME

Neither party has immediate or foreseeable prospects for acquiring capital

assets. It would appear that because of husband's past educational and work experience, he would even have a greater earning capacity.

16. CONTRIBUTION OF PARTIES IN ACQUISITION OF ESTATE

Each party has contributed to the acquisition of its own assets.

17. CONTRIBUTION OF PARTIES IN PRESERVATION OF ESTATE

There was no marital property involved. The husband's income was his principal means of contribution in the acquisition and preservation of estate. Each of the parties contributed to the day-to-day minor upkeep repairs as needed.

18. CONTRIBUTION OF PARTIES AS A HOMEMAKER TO FAMILY UNIT

The wife was admittedly a "good mother" who cared for the children during the marriage. She bore the primary responsibility for household duties,

including cooking, cleaning and laundry.

CUSTODY

Due and proper consideration has been given to both the Guardian Ad Litem Report and the Psychodiagnostic Evaluation of both Mary Patchett and Richard Patchett.

Basing one's lifestyle on values expressed in the Bible is certainly a trait to be admired and respected, but when a person's judgment is adversely affected to the point of confusion and the person becomes unreasonable and unbending insofar as her own family's well-being is concerned, it is then the feeling of this Court that the best interests of the children would continue to be served by their remaining with the father, who caters to the needs of the children

and is generally giving them the proper guidance that they need.

CONCLUSIONS

1. I find Mary E. Patchett guilty of cruel and abusive treatment and that Richard L. Patchett, Jr., is entitled to a Judgment of Divorce.

2. I find that the best interests of the minor children would best be served by awarding the Plaintiff, Richard L. Patchett, Jr., custody of the minor children and the parties.

3. I find that the wife if entitled to an award of a portion of the marital estate consistent with the criteria enumerated in Massachusetts General Laws, Chapter 208, Section 34, all of which have been considered.

4. I find that the husband is entitled to an award of a portion of the marital estate consistent with the criteria enumerated in Massachusetts General Laws, Chapter 208, Section 34, all of which have been considered.

Dated at Brockton, this 14th day of May, 1984.

/s/ GEORGE N. ASACK,
Justice Probate and
Family Court

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Now there has been an underlying issue here of conflicts of religion, perhaps of a fact that Mary practices the faith known as Born Again Christian, and that there was testimony by Mr. Richard Patchett that she spends a lot of time reading Bible stories to her children. Now we are all well aware of the First Amendment rights that one of our bais concepts of our wonderful country is freedon of religion and that we all have the right to pray in the church of our desire and practice any type of religion which is not harmful to other members of our society or community, and in evaluating what -- how this should affect or what effct any of this has on minor children is demonstrated by a number of cases, an some of those cases I have cited in the requests for rulings of law that I have presented to the Court.

Some of them are out of state jurisdictions. In fact, I just noticed a typographical error on Paragraph 2 of the Goodman versus Goodman case. It's supposed to be 180 Nebraska. That's supposed to be a "N" not a "W" and that's cited in Northwest Second. One of the leading cases in Massachusetts is Felton versus Felton, a Massachusetts case, but some cases which I wish to discuss with the Court, one of which is Goodman versus
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Goodman, the father had custody of the children and was conscientiously performing his parental duties, including their instrutions in the Jewish religion. The mother was Roman Catholic and relied heavily on a slightly expressed preference by the children for the mother's custody and religion, noting that the Courts preserve an attitude of impartiality between religions and would not

disqualify a parent because of his or her religious beliefs particularly where no showing that the religious beliefs or a conflict between them seriously threatened the health or well-being of the children, so one of the things that the Goodman case stands for in our jurisdiction and the Felton case also stands for is whether or not religious beliefs threaten the well-being of the children.

The COURT. I really don't see this as a religious issue per se.

Mr. RESERVITZ. I'm glad you do not, Your Honor, because I think that there was an attempt by the other side to indicate that Mary Patchett's religious beliefs were interfering with the normal well-being of the ---

The COURT. Well, that's a different story.

Mr. RESERVITZ. Okay. Well, this

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH,SS. FAMILY AND PROBATE COURT
No. D83-356

RICHARD L. PATCHETT

VS.

MARY E. PATCHETT

REQUEST FOR RULINGS OF LAW

Now comes Mary Patchett and makes the following request for rulings of law:

1.) The Courts have refused to restrain the noncustodial parent from exposing the minor child to his/her religious beliefs and practices, absent a clear, affirmative showing that these religious activities will be harmful to the children. In re: Marriage of Murga, 103 Cal. App. 3d 498, 504-505, 163 Cal. Rptr. 79 (1980);

2.) Harm to the child from conflicting religious instruction or practices ... should not be simply assumed or

surmised. Goodman v. Goodman, 180 Neb. 53, 88-89, 141 N.W. 2d 445 (1966);

3.) There is clear error for lack of foundation in the record, in the judge's findings of a deleterious effect" on the children and an "undermining" of the custodial relationship by reason of the father s religious instruction or practice. Felton v. Felton, Mass. 418 N.E.2d 606, 22 ALR 4th 961;

4.) Religious zealously must have such grave damaging effect on the children as to require the censorship be imposed by the judgment. Felton v. Felton, Mass. 418 N.E. 2d 606, 22 ALR 4th 961.

5.) Religious view by themselves are not sufficient to deprive a parent of custody otherwise fit and qualified for custody. Jackscn v. Jackson, 309 P. 2d 705.

Respectfully submitted,

BY HER ATTORNEY,

/s/_____

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